

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA

CASE NO. 1:18-CV-345-JMR-WCM

Tonya R. Chapman

Plaintiff,

vs.

COMPLAINT

FILED  
ASHEVILLE, N.C.

DEC 03 2018

U.S. DISTRICT COURT  
W. DIST. OF N.C.

Oakland Living Center, INC

Arlene Smith, Michael Smith

And Steve Smith

Defendant(s).

A. JURISDICTION

This action is brought pursuant to Title VII of the Civil Rights Act of 1964 as amended, for employment discrimination. Jurisdiction is specifically conferred on this Court by 42 U.S.C. Section 2000e(5). Equitable and other relief are also sought under 42 U.S.C. 2000e(5)(g). Jurisdiction is also based on 28 U.S.C. Sections 1331, 1343 and 42 U.S.C. Sections 1981 et seq. Where employment discrimination based upon age is alleged, jurisdiction is conferred by 28 U.S.C. Sections 626(c)(1) and 626(e) and appropriate relief is also sought.

## B. PARTIES

1. Name of Plaintiff: Tonya R Chapman  
Address: 379 Cooper town road
2. Name of first Defendant: Arlene Smith  
Address: 704 Poors Ford RD  
Rutherfordton, NC 28139
3. Name of second Defendant: Michael Smith  
Address: 704 Poors Ford RD  
Rutherfordton NC 28139
4. Name of third Defendant: Steve Smith  
Address: 704 Poors Ford Road  
Rutherfordton NC 28139

(Use additional sheets if necessary.)

## C. NATURE OF CASE

1. The address at which I sought employment or was employed by the defendant(s) is:  
Oakland living Center INC  
704 Poors Ford Road, Rutherfordton NC  
28139
2. The discriminatory acts occurred on or about:  
7/15 and 8/24/2018 (Month, Day, Year)

3. I filed charges with the Equal Employment Opportunity Commission regarding the defendant's discriminatory conduct on or about:

9/18/2018 (Month, Day, Year)

4. The Equal Employment Opportunity Commission sent the attached "Notice of Right to Sue" which I received on:

10/2/2018 (Month, Day, Year)

5. The discriminatory acts that are the basis of this suit are:

- a. ☐ Failure to employ me.
- b. ☒ Failure to promote me.
- c. ☐ Termination of my employment.
- d. ☒ Demotion.
- e. ☐ Denied equal pay/work.
- f. ☐ Sexual harassment.
- g. ☒ General harassment.
- h. ☐ Other acts (Be specific: Attach an additional sheet if necessary)

Plaintiff was repeatedly called Nigger by defendants grandson on 8/24/2018  
and in july of 2018

6. Defendant's conduct is discriminatory with respect to:

- a. ☐ my race
- b. ☒ my color
- c. ☐ my sex
- d. ☐ my religion
- e. ☐ my national origin
- f. ☐ my age

7. I believe that the defendant is still committing these acts against me.

YES ☒ NO ☐

#### D. CAUSE OF ACTION

1. I allege that the defendant has discriminated against me and that the following facts form the basis for my allegations:

Count 1: Racial Discrimination  
\_\_\_\_\_  
\_\_\_\_\_

Supporting Facts: (Describe exactly what each defendant did or did not do. State the facts clearly in your own words without citing any legal authority. Use additional sheets if necessary.)

SEE ATTACHMENT  
\_\_\_\_\_  
\_\_\_\_\_

Count 2: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supporting Facts:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### E. INJURY

How have you been injured by the actions of the defendant(s)?

Plaintiff was forced to quit her job, I deserve to be treated better.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## F. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

Have you filed other lawsuits in state or federal court that deal with the same facts that are involved in this action? YES ☒ NO ☐

If your answer is "YES", describe each lawsuit. (If there are more than one lawsuits, describe additional lawsuits on additional separate pages, using the same outline.)

1. Parties to previous lawsuits:

Plaintiff(s): \_\_\_\_\_

Defendant(s): Lil Ceaser company

2. Name of court and case or docket number: Asheville Federal Court

No, Case was dismissed before it got started

3. Disposition (for example, was the case dismissed? Was it appealed? Is it still pending?)

4. Issues raised:

5. When did you file the lawsuit? April 2018 (Date: Month/Year)

6. When was it (will it be) decided? April 20, 2018

Have you previously sought informal or form relief from the appropriate administrative officials regarding the acts complained of in Part D?

YES ☐ NO ☒

If your answer is "YES" briefly describe how relief was sought and the results. If your answer is "NO" explain why administrative relief was not sought.

---

---

---

---

G. REQUEST FOR RELIEF

I believe I am entitled to the following relief:

For all reason being sated in supporting fact, and evidence awarded the maxiam  
punitive damage and partial compensatory damage of 450,0000

---

---

---

---

JURY TRIAL REQUESTED

YES \_\_\_\_\_ NO ✓

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. §1746; 18 U.S.C. §1621.

Executed at \_\_\_\_\_ on 11 / 30 / 2018  
(Location) (Date)

George R Chapman  
Signature

# SUPPORTING FACTS

Tonya R. Chapman was employed by Oakland Living center in the years of 2004 through 2015. Defendant made a statement of having to purchase another beach location because of all the blacks at Myrtle beach, purchased location in Holden Beach NC.

Employee chapman worked various jobs for the company when needed. Positions being housekeeping, personal care aide and dietary cook without receiving anytime extra for the various positions performed. Plaintiff tried several time asking about becoming a medical technician for the company but was always told "No, I wouldn't be interested or (Arlene) has enough girls going to take the test. To my knowledge, Oakland Living Center hasn't had a black MedTech.

In 2014, Chapman was given a cake with a noosed up black hangman for her birthday which fell on the same day of the defendant's twins birthday. The party theme was a monkey. Employee Chapman was given the cake to leave so they could celebrate the twins birthday party in the dining room. EXHIBIT (A)

EXHIBIT (B) Employee official badge made by defendants Alene and Michael Smith, employee Chapman was forced to turn the side and be photographed for their amusement. Defendant Arlene Smith stated that I would be given slave number on my badge.

EXHIBIT (C) The Camera of which caught the racial discrimination incident on August 24, 2018, 1:15

On August 24, 2018, Employee Chapman clocked in to start her dietary cook shift minutes after being in the kitchen. Defendants grandson entered the kitchen and asked me to "come outside" I watched the young man performed some stunts on his bike, one of his twins told him that their dad wanted him, I watched John clay ride over to his father so I returned to work grabbing my dining room cart and went to the area for cleaning.

As I watch through the window of John Clay and his father, the young man came straight to the window called my name and chanted "Nigger, Nigger, get to work nigger." I closed the window and continued to clean the dining room. Someone at the home told Steve Smith.

Defendant Steven Smith walked around the kitchen before approaching me, his father asked me about the ugly word. I said, "yes, he did." He informed me that he would straighten him out about the incident.

After being humiliated and watching the staff point and stare at me laughing. The father stated that he didn't know where he got that language from. Then stated that his son and his little friend sit around saying it all the time at school. (SCHOOL was out)

After listening to the father, The father left and the John Clay returned and stated: "Tonya, you are a nigger." I said "okay."

After watching the coworkers distance themselves from me. I finished up the kitchen dishes and told my supervisor Pattie Warner that I was going to leave this time because it will stop. There are no other black employees.

On an early incident in the kitchen,, John Clay entered the kitchen and states messy with the dessert that was being prepared for the residents' supper. So I decided to put aside some cupcakes for him to decorate. The twins showed up but they were not interested in decorating cupcakes. He states reaching for more to help with, I told him I need to finish them. So I move the cupcakes over out of his reach and started washing up some dishes after a few minutes of him being upset

He informed me that his father said: "I was a lazy black nigger because I didn't come to work." Defendant's grandson continued called me Nigger because I wouldn't let him mess up my desserts for the residents. I asked him to please stop but he continued the ugly language. He then kicked me and hit me on the bottom. I just ignored him until he got bored and walked out of the kitchen for a minute.

When Supervisor Pattie Warner returned to work, I asked her if there were any black employers here, she stated no and also stated black women apply but usually never hired. I also informed her of John Clay's language towards me and she had no comment

For all the reason and evidence. Plaintiff humbly request a judgement in my favor of amount requested.



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Tonya Chapman**  
**379 Cooper Town Road**  
**Caroleen, NC 28019**

From: **Charlotte District Office**  
**129 W. Trade Street**  
**Suite 400**  
**Charlotte, NC 28202**



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.

EEOC Representative

Telephone No.

430-2018-03146

**Rebecca A. Conway,**  
**Investigator**

(704) 954-6445

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

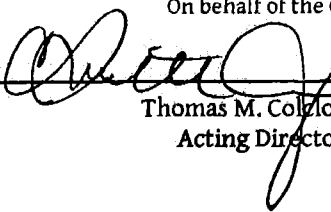
**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

SEP 28 2018

Enclosures(s)

  
**Thomas M. Colzough,**  
**Acting Director**

(Date Mailed)

cc:

**Michael Smith**  
**Owner**  
**OAKLAND LIVING CENTER**  
**704 Poors Ford Road**  
**Rutherfordton, NC 28139**

**INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.  
If you also plan to sue claiming violations of State law, please be aware that time limits and other  
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS**      --      **Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

**PRIVATE SUIT RIGHTS**      --      **Equal Pay Act (EPA):**

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

**ATTORNEY REPRESENTATION**      --      **Title VII, the ADA or GINA:**

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

**ATTORNEY REFERRAL AND EEOC ASSISTANCE**      --      **All Statutes:**

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

***IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.***

From: John Crotts <JCrotts@kinglawoffices.com>

Date: Mon, Oct 29, 2018 at 11:06 AM

Subject: RE: Chapman/Oakland Living Center Matter (CLID: 1809177705, Chapman, Tonya)

To: "vanessa.ferguson@spielbergerlawgroup.com" <vanessa.ferguson@spielbergerlawgroup.com>

Cc: "jason.watson@spielbergerlawgroup.com" <jason.watson@spielbergerlawgroup.com>, Kaitlin Myers <KMyers@kinglawoffices.com>

Ms. Ferguson,

I have spoken with my client again this morning concerning your client's allegations and your settlement proposal. Your proposal is officially rejected. Further, my client has instructed me to proceed with Rule 11 sanctions and all possible counterclaims, including but not limited to defamation, malicious prosecution, and other relevant claims, in the event you commence suit against them.

My client has spoken with Patricia ("Patti") Warner who has expressly stated to him that these allegations are completely false. I urge you to interview her to confirm her statement. There are no employees or residents of Oakland Living Center who will corroborate your client's allegations. The allegations concerning "slave numbers" and a monkey on a birthday cake are completely false. There are no photographs or documentation to support these allegations. Again, no employees or residents are aware of any such conduct by any representatives of Oakland Living Center. Mr. Smith's 6 year old son may have made a single offensive remark to your client and for that he was punished by his father. If so, he was not an agent of Oakland Living Center and measures have been taken to ensure he acts appropriately in the future.

If you have additional evidence you'd like for me to consider, please share. Thank you for your time and attention.

Thanks,

John B. Crotts

Partner

Certified Family Financial & Superior Court Mediator, NCDRC



